No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER,
THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

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in the airplane field; see *Spelar v. American Overseas Airlines, Inc.*, 80 Fed. Supp. 344, 347 (S.D. N.Y., 1947), following the New York, or coverage, approach; disposed of on unrelated grounds here; 338 U.S. 217 (1949).

3. The decision conflicts with the applicable holdings of this Court. *Southern Pacific Co. v. Arizona, supra*, relied on below, requires no such result; that case, apart from all other distinguishing circumstances, must be read against *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938), upholding a most severe regulation of state highways. As Chief Justice Stone said in the *Southern Pacific* case, *Barnwell* was distinguishable because "there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways." 325 U.S. 761 at 783.

There is no possibility of double liability for an employer in these cases; this was recognized by the Court below, which pointed out that *Industrial Comm. of Wis. v. McCartin*, 330 U.S. 622 (1947), precludes any such result. The "undue burden," therefore, was found to be solely the necessity of paying added insurance premiums: "The threat of liability would require duplicate premiums and it is this duplication which creates the undue burden on interstate commerce." Appendix, p. 20, *infra*.

The actuality of the double premium is doubtful. Arizona law permits taking out one policy with any company "authorized to transact the business of workmen's compensation insurance in the state," sec. 2, 56-932, A.C.A. 1939, and the insured could insure itself for the higher amount for both California and Arizona on one premium. But we put this aspect of the matter aside as an unimportant detail of state law; for the feared premium would not in any case be an undue burden on commerce.

This Court has so recently exhaustively analyzed the prerogatives of the state of the accident to protect its substantial interests in the consequences of these misfortunes, that we need do little more than cite the controlling cases: *Watson v. Employers Liabil.*

Assur. Corp., 348 U.S. 66, 72 (1954), stressing the interest of the state of the accident "in policies of insurance which are designed to assure ultimate payment of such damages," *Carroll v. Lanza*, 349 U.S. 408, 412, 413 (1955), a Workmen's Compensation case:

> ". . . in these personal injury cases the state where the injury occurs need not be a vassal to the home state and allow only that remedy which the home state has marked as the exclusive one. . . . The state where the tort occurs certainly has a concern in the problems following in the wake of the injury."

While the *Carroll* case presented a full faith and credit rather than a purely commerce question, the problem of unreasonable burden is much the same. The decision below is not in accord with these two recent holdings of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully prayed that this petition for certiorari be granted.

Respectfully submitted,

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November, 1955.

APPENDIX

would continue the same work for the same employer, the inability of our workmen's compensation laws to assess premiums or award compensation for the activities of the employee in another state is obvious if interstate commerce is not to be unduly burdened. It is this feature which would require the total wages of such an employee to be divided and his benefits concomitantly less, even if he were hired and injured in this state.

We decline to accept petitioners' view. Section 56-923, A.C.A. 1939, indicates that the application of our workmen's compensation laws is not to be limited to only those injuries occurring within the state. The legislature specifically intended extraterritorial coverage for employees hired in this state. Presumably employees hired in Arizona are citizens of this state and entitled to the benefits of Arizona law when their employment takes them into another state. We see no reason to contravene this legislative intent by adopting petitioner's theory especially since this would require such employees to receive much less than the legislature intended as compensation for industrial accidents.

Petitioner is correct in his assertion that we cannot guarantee that compensation will be awarded on the merits of the claim in California. But our inability to control other states does not justify our ignoring the consequences of our internal laws which substantially affect interstate commerce; the commerce clause would otherwise be meaningless.

The award is affirmed.

ARTHUR T. LAPRADE
Chief Justice

CONCURRING:

LEVI S. UDALL
Justice

DUDLEY W. WINDES
Justice

APPENDIX

CASE NO. AK 24354

1

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

JOAN GREENWAY COLLINS, WIDOW OF, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED,

CLAIMANTS,

vs.

AMERICAN BUSLINES, INC.,

DEFENDANT EMPLOYER,

THE INDUSTRIAL COMMISSION OF ARIZONA,

DEFENDANT INSURANCE CARRIER.

FINDINGS AND ORDER DISMISSING CLAIM FOR LACK OF JURISDICTION

Heretofore on the 14th day of October 1953, claimant, Joan Greenway Collins, in her own behalf as widow, and on behalf of Carroll Lee Collins, minor child, filed with this Commission her widow's and dependent's claim for compensation under the terms of the Arizona Workmen's Compensation Act alleging benefits due unto claimants by virtue of the death of Adolphus Henry Collins, whose death occurred on or about September 30, 1953. The Industrial Commission of Arizona, after considering said claim in the premises, and all matters relative thereto, and thereunto appertaining, now enters its Findings and Order as follows:

FINDINGS

1. That claimant, Joan Greenway Collins, is the widow of Adolphus Henry Collins, deceased. That claimant, Carroll Lee Collins, born August 17th, 1953, is the minor son of the said Adolphus Henry Collins, deceased.

2. That the said Adolphus Henry Collins died on or about the 30th day of September, 1953, as a result of an injury by accident occurring near Ehrenburg, Arizona.

3. That at the time of his death the said Adolphus Henry Collins was regularly employed by the above named defendant employer, American Buslines, Incorporated, in the State of California. That the said Collins was at said time a legal resident of the State of California and he was maintaining a home in said state for himself and family. That his employment with American Buslines, Incorporated involved employment in the State of California, he being required, however, to travel at intervals from a point in the State of California to a terminal point in Arizona, and return to California.

4. That the defendant employer maintained workmen's compensation coverage in the State of California and that payroll premium on the said Adolphus Henry Collins was reported to the State of California. That no reporting of such was made at any time to the Industrial Commission of Arizona.

5. That the said Adolphus Henry Collins, at the time of his death, was not regularly employed in the State of Arizona as said term has been defined by the Supreme Court of Arizona in the case of Industrial Commission vs. Watson Brothers Transportation Company, Supreme Court Case No. 5713, dated May 11th, 1953.

6. That the Industrial Commission of Arizona does not have jurisdiction in the premises, and that said widow-defendent's claim on file herein should be denied for lack of jurisdiction.

ORDER

NOW, THEREFORE, IT IS ORDERED that the claim of Joan Greenway Collins, as widow of, and Carroll Lee Collins, as minor child of Adolphus Henry Collins, deceased, filed herein on the 14th day of October, 1953, be, and the same is, hereby denied and dismissed for lack of jurisdiction, and that the said claimants take nothing in the premises.

employees engaged exclusively in interstate commerce, it would unduly burden such commerce to permit the extraction of a second premium in this state to cover the same employees for the risks of the same trips. It was assumed without being stated or discussed that Arizona in seeking to collect premiums for its state compensation fund imposed the undue burden upon interstate commerce. That assumption is adhered to by the majority of the court in arriving at a decision in this case. Since it is this basic assumption on which the decisions in both cases rest, it deserves a somewhat extended analysis.

If the Workmen's Compensation Acts of neither the states of California nor Arizona covered employees engaged in interstate commerce, no premium would be extracted so that obviously there would be no burden on interstate commerce. If the Workmen's Compensation Act of either state—and not the other—covered employees engaged in interstate commerce, the extraction of a premium by the law of such state would not unduly burden interstate commerce. Hall v. Industrial Commission, 131 Ohio St. 416, 3 N.E. 2d 367. If the Workmen's Compensation Acts of both states afforded coverage to employees engaged in interstate commerce and if both sought to extract a premium for such coverage wherever the employee traveled in interstate commerce, the employer would be compelled by the conjoined effect of the two state laws to pay a double or multiple premium for coverage of the same risk.[1] If the employer is *unable to escape the payment of such premium*, either in one state or the other, an undue burden is imposed upon interstate commerce. In order to avoid this undue burden on interstate commerce either it must be held that both states impose the undue burden or that one but not the other unduly burdens interstate commerce. To hold that both states impose the burden leads to the undesirable result that employees engaged

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[1] I have used the phrases "double premiums" and "multiple premiums" as meaning two or more premiums all sufficiently large to afford compensation for the risk of the entire trip.

IT IS FURTHER ORDERED that any party aggrieved by this award may apply for rehearing of the same by filing application therefor at the office of this Commission, within TWENTY (20) DAYS after the service of this award as provided by the rules and regulations of this Commission; and that jurisdiction be, and it is hereby reserved to alter, amend or rescind this award upon good cause.

THE INDUSTRIAL COMMISSION OF ARIZONA
By B. F. Hill
J. J. O'Neill
F. A. Nathan
Commissioners.

Dated at Phoenix, Arizona,
this 30th day of November, 1953.

II

No. 5977

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

Appeal by Certiorari from an Award of The Industrial Commission of Arizona
Award Affirmed

Lewis, Roca, Scoville & Beauchamp, and Walter Cheifetz, of Phoenix
Attorneys for Petitioners,

Robert K. Park, of Phoenix
Attorney for Respondent The Industrial Commission of Arizona

John R. Franks, Donald J. Morgan
and John E. Mills,
Of Counsel.

LaPRADE, Chief Justice.

Review by certiorari of a determination of the Arizona Industrial Commission that it was without jurisdiction to hear a claim for compensation allegedly caused by the death of petitioner's husband while in the course of his employment.

The facts are these: Adolphus Henry Collins was employed as a bus driver by the American Buslines, Inc., a Nebraska corporation, in 1944, at El Paso, Texas. During the years of his employment he drove various bus routes throughout the Southwest. At the time of his death Collins was driving a bus route between Los Angeles, California and Phoenix, Arizona from a home terminal in Los Angeles, where he was paid and lived with his family. On September 30, 1953, Collins was driving a regular return trip from Phoenix to Los Angeles. Near Ehrenburg, Arizona a bus tire blew out and the resulting accident caused Collins' death. It was found by the Industrial Commission that the American Buslines, Inc., was not certified by the Arizona Corporation Commission to engage in intrastate commerce and that the bus company operated exclusively in interstate commerce. It was further found that Collins was covered by the workmen's compensation provisions of the state of California.

The Commission concluded that it was without jurisdiction to entertain petitioner's claim for the reason that decedent was not regularly employed in Arizona as that term is used in our workmen's compensation statute, Section 56-928, A.C.A. (Cum. Supp. 1952). Petitioner appeals from this determination alleging error.

The case presents two questions: (1) was decedent, as a matter of law, not regularly employed in the state as contemplated by our workmen's compensation statute; and (2) is the Arizona Indus-

exclusively in interstate commerce are without coverage of any kind. The problem is therefore resolved to the determination of which state's laws should be given effect for if one has a greater or superior right to the enforcement of its Workmen's Compensation Act, then it is the other which imposes the burden.

It is my opinion that where as in this case the deceased was regularly employed in Arizona and the accident occurred in Arizona and the laws of the state of Arizona specifically provide compensation, it ought not to be held that the state of Arizona is unable to, does not have the jurisdiction to award compensation, for the result is to hold that the constitution and the laws of the state of Arizona in Arizona become and are subordinate to the laws of the state of California. The laws of the state of Arizona operating within the territorial limits of Arizona should be held to be paramount and superior to the laws of the state of California having extra-territorial effect. Clearly the decision in this case, having the opposite result, abdicates a portion of the sovereignty of the State to the legislature of another state and in so doing must have disregarded sound legal principles which ought to control its disposition.

The constitution of this state unequivocally demands the payment of compensation to the deceased's dependents:

> "The legislature shall enact a Workmen's Compensation Law applicable to workmen engaged in manual or mechanical labor * * * by which compensation *shall be required to be paid* to any such workman in case of his injury and to his dependents * * * in case of his death, * * *". (Emphasis supplied.) Article 18, Section 8, Constitution of Arizona.

There are no conditions attached to this constitutional mandate. The compensation *must be paid* to the employees designated by the legislature. That designation is equally explicit and mandatory:

trial Commission without jurisdiction in this case for the reason that petitioner was killed while engaged exclusively in interstate commerce and covered by the workmen's compensation laws of California?

The Commission held that decedent was not regularly employed within the contemplation of our workmen's compensation laws for the reason that he was hired outside of this state and divided his work between Arizona and California. The Commission based this conclusion on our decision of Industrial Commission v. Watson Bros. Transp. Co, Inc., 75 Ariz. 357, 256 P. 2d 730 (1953). Petitioner contends that this definition of "regularly employed" is without support in our statute.

On reviewing the Watson case, supra, it is to be noted that the question directly presented there was whether imposition of our workmen's compensation laws so as to obtain insurance premiums from an interstate employer would constitute an undue burden on interstate commerce. The case did not concern a claim for compensation by an injured employee. We held that the Commission could not require an employer to pay insurance premiums covering employees engaged in interstate commerce, who lived and were hired in other states, and who were covered by the workmen's compensation laws of another state while within Arizona. It was our view that this would compel the employer to obtain duplicate protection, and that such double premium payment would be an undue burden on interstate commerce. The employees in question were able to present their claims for injuries received in Arizona in another jurisdiction, for if such employees were not covered by the workmen's compensation laws of another state then there would have been no duplication upon which an undue burden could be said to exist, and in that event we pointed out that under the authority of Hall v. Industrial Commission of Ohio, 131 Ohio St. 416, 3 NE 2d 367 (1936), there would be no constitutional restriction on the imposition of our workmen's compensation laws. The theory of the Watson decision was that an

injured employee was to be limited in his choice of jurisdictions but not excluded altogether from an opportunity to benefit under workmen's compensation laws.

There is a vast distinction between the holding of the Watson case, supra, and the language found there and relied upon by the Commission. The definition of "regularly employed" followed by the Industrial Commission excludes employees from the benefits of our workmen's compensation statute without any consideration of their coverage in other jurisdictions. In short, such employees may be left remediless under this definition.

We feel constrained to review the construction of the term "regularly employed" enunciated in the Watson case and followed by the Commission here, for two reasons; first, the Watson case did not directly raise the question of the status of a claim by an injured employee who divides his work between this and another state as does the case at bar, and secondly, we hesitate to construe our workmen's compensation laws in a manner as to exclude employees injured in Arizona unless such construction is clearly required by the terms of the statute.

We have stated many times that our workmen's compensation laws are to be liberally construed, State v. Pressley, 74 Ariz. 412, 250 P. 2d 992 (1952); Federal Mut. Liability Ins. Co. v. Industrial Commission of Arizona, 31 Ariz. 224, 252 P. 512 (1926); to place the burden of industrial accidents on industry rather than on the employee or the public. Statutory construction which excludes employees from its protection will require specific language to that effect. Marshall v. Industrial Commission, 62 Ariz. 230, 156 P. 2d 729 (1945). Ambiguity is insufficient for then the question is to be resolved in favor of the employee rather than against him. English v. Industrial Commission, 73 Ariz. 86, 237 P. 2d 815 (1951); Ossic v. Verde Central Mines, 46 Ariz. 176, 49 P. 2d 396 (1935).

The term "regularly employed" is defined in Section 56-928 (a), A.C.A. (1952 Cum. Supp.) as

"* * * all employments, whether continuous throughout the year or for only a portion of the year, in the usual trade, business, profession or occupation of an employer."

The statute does not require that an employee hired elsewhere must work exclusively or continuously within this state to be considered regularly employed. A portion of the year is sufficient. Decedent had been employed by respondent-employer since 1944 to the time of his death. When killed in Arizona decedent was following a bus schedule which systematically required him to spend approximately forty percent of his working time in this state. Decedent worked "only a portion of the year" in this state but that is all the statute requires. We find no specific language in our statute indicating that when decedent was killed in Arizona he was not regularly employed within the provisions of Section 56-928 (a), supra.

Should the fact that decedent did not work exclusively within this jurisdiction affect our decision? We think not. An employee injured while within a jurisdiction temporarily has been held entitled to compensation in that state where the injury occurred, Johnson v. El Dorado Creosoting Co., (La. C.A.); 71 So. 2d 613 (1954); Pacific Employers Ins. Co. v. Industrial Accident Commission of California, 306 U.S. 493, 59 S.Ct. 629, 87 L.Ed. 940 (1939); and even if some other jurisdiction would entertain the claim. The paramount interest of the state where the injury occurs was recognized in Pacific Employers Ins. Co. v. Industrial Accident Commission of California, supra, where the court observed at 503:

"* * * Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power. * * * (than) the bodily safety and economic protection of employees injured within it."

In support of this view Larson points out in 2 Larson, The Law of Workmen's Compensation, 382, section 87.23 (1952):

"* * * the physical presence of the injured man within the state must concern the state. His medical and hospital bills are owed to local residents, who should not be required to go to

> foreign states for payment; the witnesses to the accident are within the state, and most of the best evidence bearing on the circumstances of the injury; * * * and, * * * the mere presence of a disabled and destitute human being within a state's borders is a social problem of concern to that state since the man may become a public charge if not provided for by compensation law."

The accident, when it occurs here, leads to all the consequences which our workmen's compensation laws were designed to avoid. Where an employee has been and where he may go cannot alter what occurs while he is here, and the latter is the concern of this state. Ocean Accident & Guarantee Corporation, Ltd. v. Industrial Commission of Arizona, 32 Ariz. 275, 257 P. 644 (1927). We see no limitation in the language or policy of our workmen's compensation laws which would compel us to conclude that the people of Arizona have not intended to protect employees or themselves from absorbing the impact of industrial accidents occurring in Arizona because an employer requires his employees to divide their work between two states, and to the extent our case of Industrial Commission v. Watson Bros. Transp. Co., Inc., supra, indicates the contrary it is repudiated.

The next question presented by this appeal is whether the commerce clause, U.S. Constitution, Article I, Section 8, makes inapplicable our workmen's compensation laws for the reason that decedent was engaged exclusively in interstate commerce when killed in Arizona, and was covered under the workmen's compensation laws of California.

There appears to be no federal legislation specifically or impliedly prohibiting the states from applying workmen's compensation laws to the employees of interstate motor carriers. The Federal Motor Carrier Act of 1935, 49.U.S.C.A. Sec. 301, et seq., does not alter this view for it contains no provisions for compensating injured employees or language which restricts the states. Basham v. Southeastern Motor Truck Lines, Inc., 184 Tenn. 532, 201 S.W. 2d 678 (1947); Hall v. Industrial Commission, supra; Etters v.

Trailways of New England, Inc., 43 NYS 2d 884 (1943); State ex rel Washington Motor Coach Co. v. Kelly, 192 Wash. 394, 74 P. 2d 16 (1937). This has been recognized by us in Industrial Commission v. Watson Bros. Transp. Co., supra.

While no specific federal legislation prohibits the application of state workmen's compensation laws this does not mean that no restraints exist upon state activities. A further limitation must be recognized. In Southern Pac. Co. v. State of Arizona, 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1914 (1945) (the train limit case), the U.S. Supreme Court observed, in part, at 767:

> "Although the commerce clause conferred on the national government power to regulate commerce, its possession of the power does not exclude all state power of regulation. * * * it has been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it. But * * * the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, * * *." (Citations omitted.)

Therefore, the question we are faced with is whether application of our workmen's compensation laws would constitute an undue burden on interstate commerce under the facts of this case, in the absence of federal legislation.

In the Watson case we held that exacting double premiums, under the facts there, would be an undue burden. The case at bar involves a claim for compensation rather than a suit to obtain insurance premiums, and the possibility that double compensation would result from an award in this and another state is highly improbable. Under the doctrine of Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 64 S.Ct. 208, 88 L.Ed. 149, 150 A.L.R. 413 (1943), the prior award would be res judicata between the parties and entitled to full faith and credit, and under the modifying opinion of the subsequent case of Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622, 67 S.Ct. 886, 91 L.Ed. 1140,

169 A.L.R. 1179 (1947), a first award would be credited to the second and result in only one total compensation. Yet while duplicate compensation is no threat, can jurisdiction to establish liability under our laws be reconciled with our holding in the Watson case? Premium payments, under our laws, are for the purpose of insuring against possible liability under our laws. If no jurisdiction exists upon which the Arizona Industrial Commission can lawfully exact premiums, does that necessarily imply that we are without jurisdiction to establish liability on the same set of facts? We fail to see how the rules may differ.

If jurisdiction exists to find employer liability, the reason for premiums exists in full force—the threat of this liability. Employers insure for no other reason. An employer who engages in business in various jurisdictions, all of which will extend jurisdiction to an injured employee for the same injury, cannot anticipate which state's laws will be invoked by the employee. Under such conditions his only recourse would be to establish protection from liability in all such states by the payment of insurance premiums. The threat of liability would require duplicate premiums and it is this duplication which creates the undue burden on interstate commerce. It is the need imposed by the laws of our state to insure twice that constitutes the undue burden, not the manner in which this duplication is obtained. We hold that to assume jurisdiction under our workmen's compensation laws on the facts of this case would constitute an undue burden on interstate commerce. Since the respondent-employer here is engaged exclusively in interstate commerce the case of Holly v. Industrial Commission, 142 Ohio St. 79, 50 NE 2d 152 (1943), cited by petitioner, is not in point.

Petitioner argues that to deprive the Commission of jurisdiction may leave her remediless in a limbo of interstate commerce. The thought is that if we decline jurisdiction for the reason that decedent was engaged in interstate commerce then other states may do the same; and since no federal compensation plan exists no remedy would be available. We fail to see how this result can

obtain under our decision here or in the Watson case. We do not decline jurisdiction merely for the reason that decedent was engaged in interstate commerce, but in view of an additional consideration—that he was also covered in another jurisdiction. If decedent had not been covered in California then there would be no duplication upon which to find an undue burden; it is not the application of state workmen's compensation laws which is prohibited under our interpretation of the commerce clause but a double application.

Petitioner contends that we should not defer to the workmen's compensation laws of another state because we cannot control such other jurisdictions and are unable to provide relief to petitioner. The error in this contention is twofold. The existence of duplicate protection imposing a burden on interstate commerce requires at least two states. Between the two it is not automatically the obligation of Arizona to defer to the other in the interests of interstate commerce. A preliminary question, latent here as in the Watson case, must first be answered; which of the two imposes the undue burden? It is to be noted that both in the Watson case and the case at bar the employees involved were those hired and residing in a state other than Arizona, and therefore we choose to adhere to our holding in the Watson case, that the application of our workmen's compensation laws under these facts would constitute an undue burden upon interestate commerce. A finding that the undue burden is imposed by California laws would be based on the view that the situs of the accident is of such importance that Arizona may impose its own laws, but the predicament of the interstate employer is then obvious. He cannot anticipate where accidents may occur to his employees, and to protect himself must conform to the workmen's compensation laws of all states in which his employees work. In short, the multiple premiums we find unduly burdensome would again be required.

Moreover, by adopting this view, which we decline to do, consistency would require us to say that when an employee hired in

Arizona engages in interstate commerce and suffers injury in another state, application of our workmen's compensation laws would impose the undue burden; therefore, the extraterritorial coverage given such employees hired in Arizona would be eliminated.

Petitioner contends that the undue burden we find in requiring an interstate employer to make two or more premium payments for the same protection could be avoided if we would apportion our premiums. Under this theory, if an employee divides his labor equally between this and another state, the premiums would be placed upon only half of his total wages since only half the risk of injury occurs here. Beyond the territorial limits of the state the application of our workmen's compensation laws would cease entirely and no double protection would be imposed by our laws.

In addition to the fact that we find no authority in our statute upon which apportionment could be made, this theory would lead to an inequitable result. Under such a view an employee, whether hired in Arizona or not, dividing his labors equally between this state and another in interstate commerce, could expect only approximately half the award he would receive in the event of his injury or death if not in interstate commerce. We cannot ignore this consequence and see no basis in reason or law compelling us to adopt a view which forces such employees to absorb the financial burden of receiving only half the award benefits to which their accidents would normally entitle them.

This result is due to the interconnection of the premium assessed, the wage base and the fact that accident awards relate to both. See: Brisendine v. Skousen Bros., 48 Ariz. 416, 62 P. 2d 326 (1936), 112 A.L.R. 1092; Gene Autry Productions, Inc. v. Industrial Commission, 67 Ariz. 290, 195 P. 2d 143 (1948). If this state could only assess premiums upon that part of the employee's income which is attributable to his work in Arizona, then in the event of an injury his average monthly wage base could only be computed on the same amount. Premiums could not be assessed on

part of his income and the award on *all* of his income, such a procedure would soon impair the public fund and contravene Section 56-923, A.C.A. 1939, and our case of Gene Autry Production, Inc. v. Industrial Commission, supra. Our case of Faulkner v. Industrial Commission, 71 Ariz. 76, 223 P. 2d 905 (1950), illustrates the consequences of adopting petitioner's view. In that case the employee worked nights at a race-course, receiving $10 a night. While his services were covered by the workmen's compensation laws they were required only a few nights a month. During the day the employee worked for the Veteran's Administration where he received $300 a month. His employment with the Veteran's Administration was not subject to our workmen's compensation laws. On his first night at the race-course he was injured. The question was whether his income from the Veteran's Administration should be included in computing his wage base upon which his award would rest, or if only the amount he received from the race-course could be considered. We held that the income received from the Veteran's Administration, which was not subject to our workmen's compensation laws, could not be included and observed:

> "In this case the Veteran's Administration was not covered nor subject to coverage and of course paid no premiums to the Commission on the wages paid petitioner * * * it is only reasonable that the rule of liability contemplates that premiums be paid to the Commission for the benefit of its insurance fund on the amount of wages of the injured employee upon which the Commission establishes its awards * * *. In this case the Commission would be derelict in its duty if it paid compensation to petitioner on the basis of his loss of earning capacity by including his earning power with an employee who paid no premiums on its wages to petitioners and who was neither covered nor could be covered by a policy with the Commission."

See also Walton v. Electric Service Co., 121 Kan. 480, 247 P. 846 (1926).

While the Faulkner case could be distinguished from the situation contemplated by petitioner in that the interstate employee

PHELPS, J., Specially Concurring:

I concur in the result reached by the majority opinion but disagree with the conclusion reached by the court that Collins was "regularly employed" in Arizona as defined by the provisions of section 56-928, A.C.A. 1939. (See Industrial Commission v. Watson Bros. Trans. Co., 75 Ariz. 357, 256 P. 2d 730.)

It seems perfectly clear to me that the language employed by the legislature contemplates that the contract of employment must have been made in Arizona. Under the rule laid down in the majority opinion, if Collins, employed in California, had been working only on what is known as the "extra list", that is, when there happened to be work available for him which only occurred five, six or seven times during the course of a year, and on those occasions drove through the state of Arizona and was injured while within the borders of the state, his claim is compensable except for the fact that it constitutes a burden upon Interstate Commerce.

There is a possibility that a case could arise under such circumstances where there would not be a burden upon Interstate Commerce.

M. T. PHELPS
Justice

STRUCKMEYER, J. (Dissenting):

I agree with the majority of this court in their conclusion that the decedent was regularly employed in the state of Arizona and concur that Industrial Commission v. Watson Bros. Transportation Co., Inc., 75 Ariz. 357, 256 P. 2d 730, be overruled as to that portion of the opinion which places a contrary interpretation upon the phrase "regularly employed". However, I cannot agree with the conclusion of the majority that the Arizona Industrial Commission is without jurisdiction to award compensation to the dependents of Adolphus Henry Collins.

Deceased was employed by respondent-employer, American

Buslines, Inc., as a bus driver on a run from Los Angeles, California, to Phoenix, Arizona, and return. While driving a bus in the regular course of employment he was killed in an accident occurring in Arizona. An employee, 'regularly employed' in Arizona, is compensated by the Arizona law for injuries incurred in the course of his employment; his dependents are compensated in the event of his death. Seemingly in California, if California is the place of employment, an injured employee or his dependents are compensated for injuries or death occurring both inside and outside of the state. Thus the Collins dependents, being covered by the laws of both states, would ordinarily be able to recover compensation in either.

That petitioner has very substantial rights of which she is deprived by the decision in this case becomes apparent in the light of certain additional facts. Petitioner's claim for compensation filed with the Industrial Commission discloses that decedent's average monthly wage was approximately $700 and that he left surviving in addition to petitioner, as widow, a child of the approximate age of one month. By Section 56-953 A.C.A. 1939 (amended by laws of 1954) petitioner as surviving widow is entitled to receive thirty-five per cent of decedent's average monthly wage until death or remarriage, and the child an additional fifteen per cent until such child reaches the age of eighteen years. Fifty per cent of decedent's average monthly wage is $350 a month. Under the laws of the state of California the maximum that petitioner and surviving child can receive, assuming they receive the maximum, is $30 per week for two hundred and forty weeks (2 Larson, Workmen's Compensation, Table 15, page 546). The difference between what the laws of the state of Arizona and the laws of the state of California give to petitioner and her child, if extended to the child's eighteenth birthday, is nearly $70,000.

This court held in Industrial Commission v. Watson Bros, supra (hereinafter referred to as the Watson Bros. case) that if an employer paid a premium under the law of another state to insure